No. 89-1166

In The

Supreme Court of the United States

October Term, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,

Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,

Respondent.

BRIEF FOR THE RESPONDENT

CLARK, HARDY, LEWIS, POLLARD AND PAGE, P.C.

TERENCE V. PAGE P18586
(Counsel of Record)
RICHARD M. TUYN P29091
401 South Woodward Avenue
Suite 400
Birmingham, MI 48009
(313) 645-0800
Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Can an employee and his union, after obtaining an unfavorable result pursuant to a collectively bargained dispute resolution process with which both parties fully complied, file an independent claim against the employer in federal court under § 301 of the Labor-Management Relations Act of 1947 to reverse the result?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

STATUTES:

TABLE OF AUTHORITIES – Continued

OTHER:

BRIEF FOR THE RESPONDENT

STATUTORY PROVISIONS INVOLVED

This case involves the following provisions of the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. § 151 *et seq.*:

1. Section 201(b), 29 U.S.C. § 171(b), which provides:

> It is the policy of the United States that –
>
> (b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining *or by such methods as may be provided for in any applicable agreement for the settlement of disputes.* (Emphasis added).

2. Section 203(d), 29 U.S.C. § 173(d), which provides: "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . . "

3. Section 301(a), 29 U.S.C. § 185, which provides:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor

> organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTER-STATEMENT OF THE CASE

Ring Screw Works and its employees have had their employment relationship governed by the collective bargaining process since the early 1950's.[1] The collective bargaining agreements in effect at the time Petitioners were discharged were entered into by Ring Screw Works (the Company) and UAW Local 771 (the Union), on January 5, 1985. These collective bargaining agreements set forth a detailed dispute resolution process which the parties agreed to follow.

Article IV, Section 1 of the collective bargaining agreements provided that if a difference arose between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort would be made to settle the difference through a multi-step grievance procedure. The first four steps of the grievance procedure were compulsory.

[1] The Ferndale Fastener Division of Ring Screw Works was initially part of the Ring Screw Division bargaining unit for collective bargaining purposes. The employees' chosen bargaining representative was UAW Local 771. In 1961, Ring Screw Division and Ferndale Fastener became separate bargaining units, both of which continued to be represented by UAW Local 771.

Step 1 required the employee and his union steward to present the grievance to his foreman. If the matter was not resolved,

Step 2 required the Manufacturing Manager or his alternate to hear the grievance presented by the employee and his steward. If the matter was not resolved,

Step 3 provided that the Union's elected six-employee Shop Committee present the grievance to Company Management. If a satisfactory settlement was not reached,

Step 4 provided that a Local or International Union Representative joined the Shop Committee in presenting the grievance to Company Management,

Step 5, which was elective, provided that if the matter remained unresolved. "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only)."

Jt. App. 51.

If a grievance remained unresolved at the conclusion of Step 5, the process continued pursuant to Article IV, Section 4, which provided "unresolved grievance (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7." Jt. App. 53.[2] The next step in the

[2] This language is contained in the collective bargaining agreement governing Petitioner Evans onl,. Petitioners conceded, however, as noted by the Sixth Circuit, that "both agreements have grievance procedures that are similar but not identical. *The differences are immaterial to the issue in the case.*" Pet. App. 7a. (Emphasis added).

dispute resolution process, as set forth in Article XVI, Section 7, was that the Union was given the option to strike and the Company was given the option to lock-out. Jt. App. 69.

In 1985, the Company discharged Petitioners Arthur Groves and Bobby J. Evans. Mr. Groves, an hourly employee at the Ferndale Fastener Division of Ring Screw Works, was discharged for excessive absenteeism. Mr. Evans, an hourly employee at the Ring Screw Division of Ring Screw Works, was discharged for falsifying company records. Both Petitioners were represented for purposes of collective bargaining by UAW Local 771. Each Petitioner claimed he had been discharged in violation of the collective bargaining agreement. Each attempted to gain reinstatement to his job by following the dispute resolution process set forth in the collective bargaining agreement. Pet. App. 2a.

Petitioners do not dispute that the grievance procedures were properly followed to their conclusion, nor do they dispute that they received competent representation from their Union. In each Petitioner's case, the Company declined arbitration, as was its right. Pursuant to the provisions of the collective bargaining agreements, this left the Union with the final option to strike, which it declined to exercise in both cases. Pet. App. 4a.

Petitioners, joined by their Union, then sought to resurrect their grievances in the federal court, claiming the Company breached the collective bargaining agreement by discharging Petitioners without just cause. Since Petitioners were merely dissatisfied with the results of their bargained-for dispute resolution process and could

show no legally cognizable reason for judicial review of their claims, the Company moved for summary judgment in each case. The United States District Court for the Eastern District of Michigan, Southern Division, granted the Company's Motion for Summary Judgment in each case, holding that Petitioners were bound by the terms and remedies of their respective collective bargaining agreements. Pet. App. 18a-29a.

Both Petitioners appealed. The United States Court of Appeals for the Sixth Circuit affirmed the trial court's decisions. Pet. App. 1a-12a. Petitioners' request for an en banc hearing before the Sixth Circuit was denied. Pet. App. 15a. Petitioners now seek this Court's review of the judgment of the Sixth Circuit.

SUMMARY OF ARGUMENT

The question presented is whether an employee and his union, after obtaining an unfavorable result pursuant to a collectively bargained dispute resolution process with which both parties fully complied, may file an independent claim against the employer in federal court under § 301 of the Labor-Management Relations Act of 1947 to reverse the results. Petitioners assert that such a right exists pursuant to the holding in *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957). The legislative history of the LMRA and the decisions of this Court construing the Act, however, demonstrate that § 301 was never intended to provide an aggrieved employee and his union the opportunity to resurrect the grievance before the court if the end result of the bargained-for dispute

resolution mechanism contained in the collective bargaining agreement was not to his liking. *See Lincoln Mills, supra; Vaca v. Sipes,* 386 U.S. 171 (1967).

Section 203(d) of the LMRA, 29 U.S.C. § 173(d), provides that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

The method chosen by UAW Local 771 and Ring Screw Works for the adjustment of disputes was that if the matter remained unresolved after completion of Step 5 in the grievance procedure, the aggrieved party was provided the option to strike or lock-out. In this case, Petitioners' Union declined to strike on Petitioners' behalf, thereby finalizing denial of the grievance.

Petitioners now advance two arguments in support of their claim that they are not bound by the results of the method agreed upon by the parties for resolution of grievance disputes. Petitioners claim: (1) the method agreed upon by the parties was not intended to be final and (2) the method agreed upon by the parties was not an acceptable method to reach a final adjustment.

Contrary to these assertions, the legislative history of the LMRA and the decisions of this Court construing the Act demonstrate that the parties are bound by the terms of the agreements they negotiate. Further, this Court has made clear that the method of dispute resolution contained in the collective bargaining agreement is the final, binding and exclusive remedy of the parties, whether or not the agreement contains explicit finality language. *See*

Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); *Bowen v. United States Postal Service,* 459 U.S. 212 (1983). Moreover, the right to strike has long been recognized as an acceptable method of reaching adjustment of disputes. *See NLRB v. Erie Resistor Corp.,* 373 U.S. 221 (1963); *NLRB v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175 (1967); *Buffalo Forge Co. v. United Steelworkers of America,* 428 U.S. 397 (1976).

The history of American industry illustrates the significant reliance management and labor necessarily attach to their collectively bargained agreements. The provisions agreed upon, including the method of achieving dispute resolution, constitute a self-contained adjudicative mechanism. The establishment of contractual promises which give rise to individual claims is premised upon the principle that by creating a contractual adjudicative mechanism, the parties prefer internal resolution of disputes to external court intervention.

In particular, Respondent submits that any collective bargaining agreement containing a dispute resolution process culminating in the right to strike evinces the intent of the parties to reject outside adjudication, absent qualifying language to the contrary. By providing the ultimate remedy of strike, which otherwise arises only in the negotiation of the contract, the parties have attached the same importance to the resolution of grievances that exists in formulating the agreement itself. The overriding theme of § 301 is that parties must abide by their agreements. When the ultimate recourse chosen is resort to economic sanctions, the absence of any evidence of legislative intent to mandate judicial or arbitral intervention requires that the parties be left to their chosen remedies.

ARGUMENT

(1) The Method of Dispute Resolution Agreed Upon by the Parties Must be Regarded as Final:

Petitioners argue that they are not bound by the results of the dispute resolution mechanism to which they agreed because the collective bargaining agreements do not expressly state that the results of the dispute resolution process were Petitioners' final, binding and exclusive remedy. The legislative history of the LMRA and the cases which have interpreted the Act lead to the conclusion that the means chosen by the parties for adjustment of disputes contained within a collective bargaining agreement are the exclusive, final and binding remedy of the parties, whether the collective bargaining agreement has explicit finality language or not.

The primary intent of Congress in enacting the LMRA was to provide that unions, as well as employers, be bound by the collective bargaining agreements into which they entered. Until the passage of the LMRA, unions could not be sued as legal entities for violations of collective bargaining agreements under the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq*. Unions were, therefore, virtually free to strike during the term of a collective bargaining agreement in violation of a no-strike clause. By including unfair labor practices which could be charged against the union (29 U.S.C. § 158(b)) and by providing that unions could sue and be sued as legal entities (29 U.S.C. § 185), Congress made labor unions responsible for the contracts into which they entered.

In enacting § 301, Congress expressed its belief that industrial peace could be achieved only if the parties

were held to the terms of the agreements into which they entered, as follows:

> If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.[3]

Under § 301(a), aggrieved parties gain access to federal court to enforce the collective bargaining agreement if the other party fails to abide by the terms of the agreement.[4]

Access to the courts under § 301 was considered by this Court in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). In *Lincoln Mills*, this Court held that the substantive law to be applied in suits brought under § 301(a) was federal law, which the courts must fashion from looking at the policy of the legislation. After examining the legislative history of the LMRA, the Court in

---

[3] S. Rep. No. 105, 80th Cong., 1st Sess., p. 16 (1947).

[4] Section 301(a) provides: "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185.

Lincoln Mills held that the parties were bound by the grievance procedure they had negotiated.

In *Lincoln Mills*, the employer and the union had negotiated a collective bargaining agreement which provided that the last step in the grievance procedure was arbitration. The contract provided that arbitration was mandatory if requested by either party. The grievances at issue were processed through the grievance procedure and were denied by the employer. The union requested arbitration and the employer refused. The union then brought suit to compel arbitration. *Id.* at 449. The issue before the Court in *Lincoln Mills* was whether § 301 should be narrowly read as only conferring jurisdiction over labor organizations upon federal courts. The Court held that such a narrow reading of § 301 would undercut the LMRA. The Court, therefore, held that § 301 was not merely jurisdictional, but rather authorized federal courts to fashion from the policy of our national labor laws a body of federal law for the enforcement of collective bargaining agreements. *Id.* at 456.

Thus, when the Court in *Lincoln Mills* quoted Senate Report No. 105, p. 15, which said, "[w]e feel that the aggrieved parties should also have a right of action in the federal court . . . ", it was doing so in the context of determining whether the federal court had jurisdiction to compel parties to abide by the terms of their collective bargaining agreement. *Id.* at 453. Petitioners' use of this quote to stand for the proposition that an employee and his union, unhappy with the results of the dispute resolution process, may disregard the exclusivity of that procedure and seek judicial review of the subject matter of the original grievance misstates the law. The *Lincoln Mills*

Court determined that the legislative history of the LRMA clearly dictated that both the union and the employer should be bound by the dispute resolution process in the collective bargaining agreement which they had entered. The Court, therefore, permitted resort to the federal courts under § 301 to compel the employer to live up to its agreement to submit to arbitration.

Petitioners' attempt to gain access to the court under § 301 because they are dissatisfied with the results of the bargained-for grievance procedure would utilize § 301 in a way never intended by Congress and never permitted by this Court. Petitioners do not claim that there has been either a procedural or a substantive failure to comply with the contractual method of dispute resolution. To the contrary, Petitioners have abandoned the agreed-upon adjustment mechanism in favor of renewing their complaint in a different forum. Petitioners seek to ignore the fact that the resolution process ran its course when the membership declined to exercise its strike option. Section 301 was not enacted to provide the parties with an alternative method of dispute resolution. Its purpose was to insure that the parties abide by their promised means of adjustment.

Accordingly, rather than directing aggrieved parties to file suit, Congress declared in § 203(d) of the LMRA that the bargained-for grievance procedure is the preferred method of settlement. Judicial deference to the bargained-for grievance procedure in cases which followed enactment of the LMRA illustrates that the Court has followed Congress' mandate that the dispute resolution mechanism chosen by the parties is intended to be

the exclusive means of dispute resolution. In the *Steelworkers Trilogy*, this Court conclusively held that the national labor policy, embodied in § 203(d), could be effectuated only if the means chosen by the parties for settlement of their differences under the collective bargaining agreement was given full play.[5] This holding is now commonly referred to as the "finality rule."

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), the second case in the trilogy, the Court observed that "a collective bargaining agreement is an effort to erect a system of industrial self-government." *Id.* at 580. At the heart of this system of industrial self-government was the grievance machinery provided for in the collective bargaining agreement. "The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *Id.* at 581.

The finality rule was further strengthened in *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653-54 (1965), where this Court stated:

> Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the "common law" of the plant. . . . A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition

[5] *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

> to cutting across the interest already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95 (1962).[6]

The Court in *Vaca v. Sipes*, 386 U.S. 171 (1967), recognized two exceptions to the finality rule. First, an individual can bring an action for breach of a collective bargaining agreement against his employer, provided the employee can prove that the union breached its duty of fair representation in the handling of the grievance. 386 U.S. at 186. Absent proof that the union's processing of the employee's grievance was arbitrary, discriminatory or in bad faith, the employee may not proceed against the employer under § 301. *See also Chauffeurs, Teamsters and Helpers Local 391 v. Terry*, 494 U.S. ___, 108 L.Ed.2d 519, 527 (1990); *DelCostello v. Teamsters*, 462 U.S. 151, 163-64 (1983). Petitioners herein do not allege their union

[6] *See also Clayton v. Automobile Workers*, 451 U.S. 679, 687 (1981), wherein this Court stated:

> The rule established by *Republic Steel [v. Maddox]* was thus intended to protect the integrity of the collective-bargaining process and to further that aspect of national labor policy that encourages private rather than judicial resolution of disputes arising over the interpretation and application of collective-bargaining agreements.

breached any such duty and, in fact, have joined their union as a co-Plaintiff.

Second, *Vaca* held that an exception to the finality rule occurs when the grievance procedure has been repudiated by the employer. 386 U.S. at 185. This exception, likewise, does not apply in this case, since Petitioners have never disputed that the grievance procedure was properly followed to its conclusion. Absent one of the exceptions set forth in *Vaca*, the finality rule precludes an employee's resort to the courts and binds the employee to the method of adjustment set forth in the collective bargaining agreement. Petitioners' attempt to go beyond *Vaca* and create a third exception to the finality rule should be rejected by this Court. To permit individuals access to the courts under these circumstances would undercut the grievance procedure and overburden the courts with a flood of cases.[7]

In *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), the Supreme Court again held that pursuant to congressional mandate, parties must be left to settle their differences under a collective bargaining agreement by the means they had chosen. *Id.* at 562.

Petitioners rely upon the Seventh Circuit opinion in *Associated General Contractors of Illinois v. Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), for the proposition that absent unequivocal language that the dispute resolution mechanism contained in a collective bargaining agreement is intended to be the exclusive and

---

[7] See D.E. Feller, "A General Theory of the Collective Bargaining Agreement," 61 *Calif. L. Rev.*, 663, 853 (1973).

final remedy, parties may seek judicial resolution of the underlying grievance. However, judicial interpretation of the LMRA as it has evolved in the United States Supreme Court demonstrates the opposite to be true. This Court has made clear that the means chosen by the parties for adjustment of the dispute are the exclusive, final and binding remedies of the parties unless the collective bargaining agreement explicitly says they are not. In *Republic Steel v. Maddox, supra,* the Court stated: "the federal [finality] rule would not of course preclude Maddox' court suit if the parties to the collective bargaining agreement *expressly agreed that arbitration was not the exclusive remedy.*" 379 U.S. at 657-58 (emphasis added). Thus, rather than holding that the dispute resolution process in a collective bargaining agreement is *not* the exclusive remedy in a collective bargaining agreement unless the agreement specifically says it *is*, the *Maddox* court held that the dispute resolution process *is* exclusive unless the parties expressly agree that it is *not*.

In *Maddox*, the collective bargaining agreement stated that an employee "may discuss" a complaint with his foreman. The Court observed:

> Use of the permissive "may" does not of itself reveal a clear understanding between the contracting parties that individual employees, unlike either the union or the employer, are free to avoid the contract procedure and its time limitations in favor of a judicial suit. *Any doubts must be resolved against such an interpretation.*

Id. at 658-59 (Emphasis added).

Applying the rationale of *Maddox* to the facts of this case, any doubts about whether the parties intended the

means of dispute resolution set forth in the collective bargaining agreement to be final should be resolved against an interpretation which would permit the parties to avoid the contract procedure in favor of a judicial suit.

The very nature of the collective bargaining process compels the conclusion that the parties intended for the dispute resolution mechanism set forth in the collective bargaining agreement to be the final, binding and exclusive remedy of the parties. The collective bargaining agreements in this case were arrived at through arms-length negotiation with the UAW, a powerful and sophisticated bargaining representative which was at no disadvantage during the bargaining process. The UAW bargained for and agreed to the strike/lock-out option as the final means of achieving dispute resolution if the steps in the grievance procedure failed to resolve the matter. Respondent urges this Court to hold the parties to their contract pursuant to the word and spirit of the national labor policy. To do otherwise would be contrary to the very reason the LMRA was enacted – to make unions, as well as employers, responsible for the contracts they negotiated.

Further, the nature of the employment relationship in the absence of a collective bargaining agreement compels the conclusion that the parties intended the dispute resolution mechanism set forth in the collective bargaining agreement to be the final, binding and exclusive remedy of the parties. Under traditional common law principles, employment is terminable at the will of either the employee or the employer. *See Bowen v. United States Postal Service*, 459 U.S. 212, 224 (1983); *Toussaint v. Blue Cross and Blue Shield of Michigan*, 408 Mich. 578, 292

N.W.2d 880 (1980). In *Bowen*, this Court observed that a collective bargaining agreement creates rights exceeding the traditional common law employment terminable at-will. Rather, it is an agreement creating relationships and interests under the federal labor policy. 459 U.S. at 224-25.

Typically, in entering into a collective bargaining agreement, the company relinquishes its right to terminate at-will and agrees to be bound by a just cause standard. The individual employees give up their right to negotiate independently with the employer and agree to be bound by the agreements negotiated by their chosen bargaining representative. The collective bargaining system as encouraged by Congress of necessity subordinates the interests of the individual employees to the collective interests of all employees in a bargaining unit. *Vaca v. Sipes*, 386 U.S. 171, 182 (1967), citing *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944). The substantive rules embodied in a collective bargaining agreement are the product of consensual arrangement.[8]

---

[8] In "A General Theory of the Collective Bargaining Agreement," Professor Feller states:

> American Industrial Society relies to an extraordinary degree on the voluntarily developed systems of law embodied in collective agreements to provide the protections for employees which are provided in other societies by public law. There are enormous advantages to such a system. Public laws can provide certain elementary protections, such as the right to be free from discharge except for just cause, but complex systems of seniority, of rules governing scheduling and allocation of overtime, of job evaluation and classification, and the myriad other matters

(Continued on following page)

The parties in this case bargained for and agreed to a mechanism to resolve disputes, including whether the Company had "just cause" to terminate an employee. This bargained-for mechanism permitted the aggrieved party to exercise the option to strike or lock-out. The Court must consider whether an employer would give up the right to discharge at-will and agree to be bound by a just cause standard if it did not intend that the dispute

---

(Continued from previous page)

> which are made subject to a rule of law in the modern American collective agreement cannot be imposed by broadly applicable public law. They must be developed in light of the particular needs and circumstances of individual industries, companies and even plants or departments.
>
> Under our system, there is no mandate that such rules be contained in collective agreements. The parties must agree. Their willingness to do so is, I believe, dependent in large measure on their ability to establish their own adjudicative machinery, with its own remedial limitations. The specification of a rule in a collective agreement is always subject to the hazard that its application in unforeseen circumstances or its interpretation in unforeseen ways will bring unintended consequences. That hazard is limited to the extent that the parties themselves control the procedure in which disputed questions of interpretation and application are determined and the remedies which can be provided. *I believe, in short, that the existence of the very rules upon which many individual claims are based is itself dependent upon the absence of an individual right to obtain adjudication of claims of their violation in a forum foreign to the system.*

D.E. Feller, "A General Theory of the Collective Bargaining Agreement," 61 *Calif. L. Rev.*, 663, 853-54 (emphasis added).

resolution mechanism set forth in a collective bargaining agreement would be the final, binding and exclusive remedy of the individual employees.

Petitioners' argument that they should be permitted to begin their claim anew in federal court would be plausible *if* no dispute resolution mechanism was provided in the agreement. If this were the case, Petitioners may argue that they were left without a remedy. But this is *not* the agreement in this case. In this case, the parties negotiated a dispute resolution process and even went so far as to include that the Union would be released from its no-strike pledge. This was irrefutably the adjustment method agreed upon by the parties. Respondent urges the Court to hold that this adjustment method is the final, binding and exclusive remedy of the parties.

(2) An Option to Exercise a Strike/Lock-Out Clause is a Proper Method by Which to Reach Final Adjustment of Disputes.

Alternatively, Petitioners argue they should be permitted to start over in federal court because Congress did not intend that the option to exercise a strike/lock-out clause could be a method by which to reach final adjustment of disputes. Petitioners' contention, however, is contrary to the national labor policy, embodied in the LMRA, that parties should be responsible for the contracts they make. It is certainly anomalous for Petitioners to claim that the very method they negotiated for adjustment of disputes cannot now be considered an acceptable method of adjustment.

Petitioners' assertion that resort to economic weapons is an improper method of achieving dispute resolution is belied by the labor/management history which has evolved. As observed by this Court in *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 409 (1976), "there is no general federal anti-strike policy." Quite the contrary, the right to strike is included in the rights of employees to engage in concerted activities guaranteed by Section 7, 29 U.S.C. § 157, and protected from employer interference by Section 8(a)(1), 29 U.S.C. § 158(a)(1) of the amended National Labor Relations Act. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 233 (1963). This Court observed in *Erie Resistor* that "[t]his repeated solicitude for the right to strike is predicated upon the conclusion that a strike when legitimately employed is an economic weapon which in great measure implements and supports the principles of the collective bargaining system." *Id.* at 233-34.

The Court went on to say:

> While Congress has from time to time revamped and redirected national labor policy, its concern for the integrity of the strike weapon has remained constant. Thus when Congress chose to qualify the use of the strike, it did so by prescribing the limits and conditions of the abridgment in exacting detail, e.g., §§ 8(b)(4), 8(d), by indicating the precise procedures to be followed in effecting the interference, e.g., § 10(j), (k), (l); §§ 206-210, Labor Management Relations Act, and by preserving the positive command of § 13 that the right to strike is to be given a generous interpretation within the scope of the labor Act. The courts have likewise repeatedly recognized and effectuated the

> strong interest of federal labor policy in the legitimate use of the strike. (Citations omitted).

Id. at 234-35.

This Court has recognized the legitimacy of both economic strikes and strikes to protest unfair labor practices. *Belknap, Inc. v. Hale*, 463 U.S. 491, 493 (1983). Further, the Court in *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967), recognized that "[t]he economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms . . . ."

The UAW itself has always been a staunch supporter of the right to strike. *See International Union, UAW v. Wisconsin Employment Relations Board*, 336 U.S. 245 (1949); *Baker v. General Motors Corp.*, 478 U.S. 621 (1986). The UAW's commitment to preserving the right to strike extends to imposing fines upon its members who do not participate in the strike. *NLRB v. Allis-Chalmers Mfg. Co., supra*. The fact that the UAW now shifts gears and argues that strikes are not a proper method of adjustment for resolution of grievance disputes under § 203(d) is without support. In fact, this Court acknowledged in *United Steelworkers v. Warrior & Gulf, supra*, that a collective bargaining agreement containing a waiver of a no-strike pledge is one of the options to which the parties may agree. 363 U.S. 574, 578 (1960).[9]

---

[9] Footnote 5 states: Contracts which ban strikes often provide for lifting the ban under certain conditions. Unconditional pledges against strikes are, however, somewhat more frequent than conditional ones. Where conditions are attached to no-strike pledges, one or both of two approaches may be used:

(Continued on following page)

Concededly, the majority of cases which have come before the Court on this issue have involved an arbitration clause, since many collective bargaining agreements designate arbitration as the final step in the grievance procedure. However, nothing in the legislative history of the LMRA, nor the cases which followed the Act, require that the grievance procedure result in binding arbitration before the courts will give full play to the means chosen by the parties for resolution of their disputes. In fact, the legislative history of the LMRA reveals that Congress refused to require compulsory arbitration for grievance disputes, on the ground that it was not desirable for the federal government to dictate the particular methods for settling such disputes.[10]

(Continued from previous page)

certain subjects may be exempted from the scope of the pledge, or the pledge may be lifted after certain procedures are followed by the union. (Similar qualifications may be made in pledges against lockouts).

Most frequent conditions for lifting no-strike pledges are: (1) The occurrence of a deadlock in wage reopening negotiations; and (2) violation of the contract, especially non-compliance with the grievance procedure and failure to abide by an arbitration award.

No-strike pledges may also be lifted after compliance with specified procedures. *Some contracts permit the union to strike after the grievance procedure has been exhausted without a settlement, and where arbitration is not prescribed as the final recourse.* Other contracts permit a strike if mediation efforts fail, or after a specified cooling-off period. Collective Bargaining, Negotiations and Contracts, Bureau of National Affairs, Inc., 77:101. 363 U.S. at 578, n.5. (Emphasis added).

[10] II NLRB, *Legislative History of the Labor-Management Relations Act*, 1947, pp. 434-35, 1520. *See also Sinclair Refining*

(Continued on following page)

In *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 218-19 (1979), this Court observed:

> In the 1947 Taft-Hartley Act Congress sought to promote numerous policies. One policy of particular importance – if not the overriding one – was the policy of free collective bargaining . . . . It follows that the parties' agreement primarily determines their relationship . . . . [T]hough [a] policy in favor of arbitration may color interpretation of [the] contract, it cannot impose an agreement to arbitrate where the parties have agreed not to arbitrate . . . . If the parties' agreement specifically resolves a particular issue, the courts cannot substitute a different resolution. (Citations omitted).

The principles set forth in the *Steelworkers Trilogy* do not rest upon any national policy favoring arbitration or upon the presumed expertise of arbitrators, but rather are grounded upon the statutory provision favoring settlement of disputes by the method agreed upon by the parties. It is not arbitration, per se, that is required under the national labor policy. Rather, it is that the parties be bound by whatever means they have chosen through collective bargaining for the resolution of their grievances.

In analyzing the national labor policy, the United States Court of Appeals for the Fifth Circuit in *Haynes v.*

(Continued from previous page)

Co. v. Atkinson, 370 U.S. 195, 211-12 (1962), wherein this Court stated: "And certainly no one could contend that § 301 was intended to set up any such system of 'compulsory arbitration' as the exclusive method for settling grievances under the Taft-Hartley Act."

United States Pipe & Foundry Company, 362 F.2d 414, 416 (5th Cir. 1966), observed:

> Subsequent to *Lincoln Mills*, this policy of giving full play to the means chosen the parties for resolving disputes has been given further shape in various Supreme Court opinions. Of the three available forums for the resolution of disputes – contractual grievance procedures such as arbitration, or the court, or the picket line – the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement . . . . The court has opened the doors of the courthouse only when the parties have chosen this forum over the others. (Citations omitted.)

In "A General Theory of the Collective Bargaining Agreement," Professor David Feller[11] sets forth why it is imperative that courts give full play to the means of dispute resolution chosen by the parties, even if the means chosen is the option to strike. Feller states:

> By specifying that the grievance procedure terminates in the right to strike rather than adjudication before an arbitrator, the parties have clearly indicated that they do not want these issues adjudicated by anyone. The parties regard the issues as so vital, and the standards incorporated in their agreement so uncertain of application, as to require that resolution of disputes on the specified subjects remain open for

[11] David E. Feller is a Professor of Law at the University of California, Berkeley. Before assuming this position, he was a union attorney for nearly 20 years and served as General Counsel for the United Steelworkers and the Industrial Union Department of the AFL-CIO. Feller, 61 *Calif. L. Rev.*, 663, 856, n. 718.

> the same kind of negotiation that takes place in the formation of an agreement. There seems to be no policy justification for imposing upon them adjudication by the courts.
>
> * * *
>
> On principle, the preferred view would be to honor the intentions of the parties in the absence of a clearer showing than now exists that federal labor policy requires that arbitration be imposed, directly or indirectly, where it has not been agreed upon. Section 301 was, after all, enacted on the thesis that the parties should be required to honor their agreements. *Where the parties have agreed, for whatever reason, that the ultimate recourse shall be a test of economic strength during the term of an agreement as well as at the periodic intervals when the agreement is open for negotiation, it should require a clear showing that Congress intended to overrule that intention before a system of impartial adjudication, either judicial or arbitral, is imposed on parties who have shown that they do not desire it.*

Feller, 61 *Calif. L. Rev.*, 663, 846-47 (emphasis added).

Petitioners argue that strikes are not a preferred method for resolving grievances. Whether strikes are preferred, however, is not the issue before this Court. Section 203(d) declares that "[f]inal adjustment by a method agreed upon by the parties is the desirable method for settlement of grievance disputes." Petitioners claim that nothing in § 203(d) "goes further and bespeaks a preference for strikes and lock-outs over judicial enforcement of labor contracts." In fact, § 203(d) does not express a preference for judicial enforcement *at all*. The only preference expressed in § 203(d) is that the matter be resolved according to the means chosen by the parties. It would

defeat the purpose of § 203(d) if either Congress or the Court imposed its preferred method of dispute resolution upon the parties.

Further, Petitioners claim that a collective bargaining agreement which permits the parties to exercise a strike/lock-out option is irreconcilable with the policy underlying § 301(a) to promote industrial peace. The policy underiying § 301(a), however, is to make collective bargaining agreements binding and enforceable against both parties. It was Congress' belief that industrial peace would be achieved if this policy were effectuated.[12] Nowhere in the legislative history of the LMRA is there support for Petitioners' assertion that a bargained-for dispute resolution process culminating in a strike or lock-out is destructive of industrial peace. In terms of negotiated agreements, the national labor policy is embodied in § 203(d) rather than § 301.

As displayed in § 208 of the LMRA, Congress was not hesitant to prohibit strikes when a strike would imperil national health or safety.[13] If Congress intended to

---

[12] S. Rep. No. 105, p. 17 summed up the philosophy of § 301 that: "statutory recognition of the collective agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements and will thereby promote industrial peace."

[13] LMRA § 208, 29 U.S.C. § 178, provides:

(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the

(Continued on following page)

preclude an option to strike or lock-out as a means of reaching final adjustment, it certainly could have so provided. Instead, Congress protected the right to strike.[14] Further, Congress specifically refused to designate which dispute resolution means were acceptable and which were not, stating that this was a choice best left to the parties to the agreement.[15]

Petitioners offer no support for their position that the term "adjustment" as used in § 203(d) "simply does not encompass results brought about by resort to economic weapons." Petitioners merely quote portions of the

---

(Continued from previous page)

parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out –

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of sections 101 and 115 of this title shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 346 and 347 of title 28.

[14] 28 U.S.C. § 158(a)(1).

[15] See footnote 10.

LMRA and then provide their own interpretation of the word. Petitioners are unable to cite any case law or legislative history which supports their interpretation of the term "adjustment."

This Court in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962), held that in interpreting and applying federal statutes, the Supreme Court has no power to change deliberate choices of legislative policy made by Congress within its constitutional powers. Rather, where Congress' intent is discernible, the Court must give effect to that intent. Congress' intent that the means chosen by the parties is the desirable method for resolution of disputes is clear in the legislative history of the LMRA.

In *DelCostello v. Teamsters*, 462 U.S. 151, 163 (1983), this Court, citing *Teamsters v. Lucas Flour*, 369 U.S. 95, 103 (1962), observed that the consensual processes which federal labor law is chiefly designed to promote are the formation of the collective agreement and the private settlement of disputes under it. The presence of such a clearly-stated legislative intent and judicial application of that intent leaves no room for Petitioners to theorize on the meaning of the word "adjustment." Petitioners' argument that an option to exercise a strike/lock-out clause cannot be a method of reaching final adjustment of disputes is without support.

CONCLUSION

For the foregoing reasons, the Judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

CLARK, HARDY, LEWIS, POLLARD AND PAGE, P.C.

By: TERENCE V. PAGE P18586
(Counsel of Record)
RICHARD M. TUYN P29091
401 South Woodward Avenue
Suite 400
Birmingham, MI 48009
(313) 645-0800

Attorneys for Respondent